

Before the District Consumer Disputes Redressal Forum, Mandi H.P.

Complaint Case No.14/2009

Date of Institution 23-12-2008

Date of Decision 20-4-2010

Lawan Thakur son of Sh. N.R. Thakur Resident of House No.88/6 Samkhetar,
Mandi, District Mandi, H.P.

...Complainant

Vs

1. Public Information Officer cum Additional District Magistrate , Kullu, H.P.
2. State of through Principal Secretary
(AR) HP Secretariat Shimla, H.P..

.....Opposite parties

For the complainant

Sh. Singh Rana, Advocate

For the opposite parties

No.1 and 2

Sh. Chanan Singh ,

Complaint under Section 12 of the

Consumer Protection Act, 1986.

ORDER.

This order shall dispose of a complaint under Section 12 of the Consumer Protection Act, 1986(hereinafter referred to as the “Act”) instituted by the complainant against the opposite parties .The facts of the complaint are that the complainant applied to the opposite party No.1 on 6-11-2008 seeking certain information under Right to Information Act vide Annexure CA along with fee of Rs.10/- in the shape of IPO. On 3-11-2008 he received a letter from the opposite party No.1 whereby he was informed that information sought was consisting of 26 pages and was ready for dispatch after the payment of Rs.260/- plus Rs.35/- as additional charges towards the expenditure incurred by the opposite party No.1 upon the information sought . The opposite party No.1 had also supplied challan vide which Rs.295/- had been sought to be paid . The grievance of the complainant is that the opposite party No.1 had calculated the charges of

information sought @ Rs.10/- per page of A-4 size whereas according to him the above charges have been amended by the opposite party No.1 with effect from 22-10-2008 and he should have been charged @ Rs.2/- per page of A-4 size . The complainant alleged that he took up the matter regarding excessive charging with the opposite party No.1 orally, but the same was ignored and insisted for deposit of Rs.295/- in the State Treasury. The complainant further alleged that he was forced to deposit Rs.295/- in the State Treasury at Mandi and he deposited the same on 11-12-2008 vide copy of challan and receipt Annexure CD. The complainant averred that the cause of action had arisen to him on 6-11-2008 when he applied for the supply of information and since he had purchased the IPO of Rs.10/- at Mandi and deposited the money of challan at State Bank of India Mandi branch , hence this forum got the jurisdiction to entertain, try and decide the present complaint. With these allegations, the complainant had sought a direction to the opposite parties that excessive amount be refunded to him along with interest at the penal rate. Apart from this compensation in the sum of Rs.99,000/- has also been sought on account of harassment , agony and deliberate, intentional and wrongful loss to him at the hands of the opposite party no.1 besides costs of the complaint has also been claimed.

2. The opposite parties No.1 and 2 filed reply wherein preliminary objections have been raised that the complaint is not maintainable in the present form as complainant has not exhausted the proper channel provided under Right of Information Act, hence the complaint is liable to be dismissed, that the complainant has no locus standi to file the present complaint, that the complainant is estopped by his own act and conduct to file the present complaint, that no cause of action has arisen in favour of the complainant to file the present complaint, and that the complainant has not come with clean hands before this Forum and has suppressed the material and true facts from this Forum and the complaint is liable to be dismissed. On merits the opposite parties No.1 and 2 have not denied that the complainant had sought information from them and also deposited Rs.295/-. It has been averred that Rs.260/- had been demanded as expenditure for preparation

of information sought and Rs.35/- as postal charges . It had been pleaded that the rate of fee per page has been assessed by the dealing hand concerned as per old / previous rate as copy of notification and the rate of fee which were revised / amended was not available with the concerned dealing hand and inadvertently the fee was asked as per the old rate . The opposite parties have denied that the complainant had asked orally regarding excessive charges and his plea was ignored. The opposite parties contended that the complainant did not make any representation of over charging by the dealing hand to the PIO or the Appellate authority. It has further been contended that notice for fee was sent to the complainant along with challan form with blank columns of amount and the complainant was at liberty to fill the required amount by referring to the amended charges which was never done. It has also been contended that when the matter of excessive charging came to the notice of the opposite party No.1, then the excessive amount tendered by the complainant was released on 27-1-2009 through Bank draft No.996098 dated 27-1-2009 Annexure A-1 which was duly received by him . It has further been averred that while asking the complainant to deposit the fee through letter dated 3-12-2008, he was intimated that if he was not satisfied with the amount of fee assessed by the officer of opposite party No.1, then he was at liberty to file an appeal against the same before the Deputy Commissioner Kullu within 30 days and since the complainant did not exhaust this remedy, the complaint is not maintainable and the demand of fee at old rate was just by clerical mistake and not intentional. The opposite parties had prayed for dismissal of the complaint .

3 The complainant had filed rejoinder reiterating the contents of the complaint and controverting those as made in the reply.

4 We have heard the ld. counsel for the parties and have carefully gone through the record. The case of the complainant is that on 6-11-2008, he applied to the opposite party No.1 seeking certain information under the Right to Information Act and on 3-12-2008 he received a letter from the opposite party No.1 whereby he was informed that information sought was consisting of 26 pages and was ready for dispatch after payment of Rs.260/- plus Rs.35/- as additional charges towards

the expenditure incurred . It has not been disputed by the opposite parties that on 3-12-2008 an intimation was sent to the complainant to deposit Rs.260/- as expenditure for preparation of the information sought and Rs.35/- were required to be deposited as postal charges .It has also been admitted by the opposite parties that as per the amended rules , the complainant was required to be charged Rs.52/- as preparation charges plus postal charges but the fee from the complainant was charged at old rate by clerical mistake as the fee had been assessed by Dealing hand as per old / previous rates because the copy of the notification through which the fee was revised/ amended was not available with the concerned dealing hand.

5 Now the question which arises for determination by this Forum is as to whether the act of the opposite party No.1 in over charging the complainant amounts to deficiency in service . As per section 2(1)(c) (iv)(a) of the Act, a complaint is maintainable when a service provider has charged for service mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force . The scrutiny of the record revealed that Government of Himachal Pradesh had issued notification dated 22nd October 2008 Annexure- CF whereby right to Information Rules 2006 were amended and as per the amended Rules , the fee for supplying information at paper A-4 size was reduced from Rs.10/- to Rs.2/- per page . Therefore it has become clear that an excessive amount of Rs.208/- in violation the Govt, notification Annexure C-F dated October 22,2008 had been charged by the opposite party No.1 from the complainant . Hence we have no hesitation to conclude that the opposite party No.1 had charged excessive amount from the complainant and aforesaid act of the opposite party No.1 amounts to deficiency in service .

6 The case of the opposite parties is that the complaint is not maintainable because the complainant has not exhausted the proper channel as the remedy was available with the complainant under the specific statute i.e. Right to Information Act. As per the opposite parties , if the complainant was not satisfied

with the amount assessed by the opposite parties, then he was at liberty to file an appeal against the same before the Appellate Authority within 30 days under the Right to Information Act. However in our opinion, the provision of the appeal under the Right to Information Act, 2005 is no bar to the entertainment of the complaint by this Forum under the Consumer Protection Act because section 3 of the Act provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. In a case titled **Skypak Courier Ltd vs Tata Chemicals Ltd AIR 2000 Supreme Court 2008** it has been held by the Hon'ble Apex court that if there exists an arbitration clause in an agreement and the complaint is made by the consumer in relation to certain deficiency in service then the existence of arbitration clause will not be a bar to the entertainment of the complaint by the redressal agency under the Act. The relevant portion of the aforesaid judgments reads as under:-

“.....Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer in relation to certain deficiency in service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency constituted under the Consumer Protection Act since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force.”

7 Therefore on the basis of the aforesaid decision of the Hon'ble Apex court, in the present case also, it can safely be held that the remedy of the appeal available to the complainant under the provision of the Right to Information Act will not be a bar for entertainment of the complaint by this Forum constituted under the Act with respect to the complaint instituted in relation to deficiency in service, since the remedy provided under the Consumer Protection Act is in addition to and not in derogation of the provisions of any other law for the time

being in force.

8 Now the next question which arises for consideration before this Forum is as to what relief the complainant is entitled to in the given facts and circumstance of the present case. The complainant has prayed for refund of the excessive amount received from him by the opposite party No.1. However, it has been stated by the opposite parties in the reply that when the matter of excessive charging came to the notice of the opposite party No.1 then after examining the matter ,excessive amount tendered by the complainant was released to him vide office letter dated 27-1-2009 through Bank draft dated 27-1-2009. It has been admitted by the complainant in his affidavit dated 25-5-2009 that the amount of Rs.208/- was received by him by way of demand draft but was yet to be encashed .As the excessive amount has already been refunded to the complainant , therefore , in such circumstances it would be in the interest of justice , if we award a sum of Rs.500/- as compensation in favour of the complainant on account of the harassment suffered by him due to the act of the opposite party No.1 along with cost of litigation .

9 In the light of above discussion, the complaint is allowed and the opposite party No.1 is directed to pay Rs. 500/- to the complainant as compensation within a period of one month from the date of receipt of the copy of this order failing which to pay interest at the rate of 9% per annum from the date of filing of the complaint till realization . Apart from this the opposite party No.1 is also directed to pay Rs.500/- as cost of litigation. It is made clear that the opposite party No.1 is at liberty to recover the aforesaid amount from the erring official /s, if any , after conducting due inquiry in accordance with law .

10 Copy of this order be supplied to the parties free of cost as per Rules.

11 File, after due completion be consigned to the Record Room.

Announced

20-4-2010

(Sushil

Kukreja) President

DKM

(Lal Singh) (Alaknanda) Members